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MCDERMOTT, WILL & EMERY

February 14, 2003

VIA MESSENGER

Thomas J. Martin, Esq.
(C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3507

Re: Sauget Area 2 Site - Groundwater Operable Unit Sauget, Illinois
Notice Under Section 122(a) of CERCLA and Unilateral Administration Order

Dear Mr. Martin:

This letter, on behalf of ExxonMobil, responds to William Muno's letter of October 3, 2002 which forwarded the Agency's CERCLA Section 106 Administrative Order for Remedial Design and Interim Remedial Action (Docket No. V-W. '02-C-716) (the "UAO") concerning Site R within the Sauget Area 2 Site. The UAO, dated September 30, 2002, directed ExxonMobil and other named Respondents to perform a remedial design for an Interim Groundwater Remedy for Sauget Area 2, Site R described in a Record of Decision ("ROD") dated September 30, 2002. The UAO further directed the Respondents to implement the remedial design by performing an interim remedial action.

This letter tenders, pursuant to CERCLA Section 106(b), ExxonMobil's sufficient cause defense for not complying with the UAO. Further, it outlines ExxonMobil's good faith efforts toward complying with the UAO

ExxonMobil Has Sufficient Cause Pursuant to CERCLA Section 106(b) Not to Comply With the UAO

The UAO provides that each Respondent asserting a "sufficient cause" defense under Section 106(b) of CERCLA should describe the nature of any "sufficient cause" defense using facts that exist on or prior to the effective date of the UAO. (UAO ¶ 101) The effective date of UAO is thirty days after its issuance. (UAO ¶ 97) EPA issued the UAO on September 30, 2002, thereby making its effective date October 30, 2002. However, during a November 6,

2002 meeting with yourself and other EPA officials, the Agency advised the Respondents that the Agency was extending the effective date to November 15, 2002.

In a November 12, 2000 letter to Mr. Muno, ExxonMobil and other communicating potentially responsible parties ("PRPs")¹ requested that EPA extend the deadlines for responding to your October 3, 2000 letter and the UAO. In January 2003, EPA extended these deadlines to February 14, 2003.

For the reasons set forth below, ExxonMobil has sufficient cause for not complying with the UAO. There is insufficient information to show that ExxonMobil is a potentially responsible party for the releases which are the subject of the UAO (*i.e.*, releases from Site R to the Mississippi River).

The UAO is Directed Toward Releases Originating at Site R and the W. G. Krummrich Plant - Releases for Which Solutia is the Sole Responsible Party.

The UAO requires the Respondents to submit a workplan for the remedial design and remedial action for what EPA has termed the Sauget Area Groundwater Operable Unit ("OU"). (UAO ¶ 44) The OU encompasses the groundwater contamination releasing to the Mississippi River adjacent to Site R. (UAO ¶ 6) Although the UAO suggests other "possible" sources contributing to the releases from Site R, it is clear that the only documented sources of the chemicals of concern identified by EPA for the OU are the responsibility of Solutia (f/n/a Monsanto) due to releases from its toxic waste landfill (*i.e.*, Site R) and W. G Krummrich plant in Sauget. For the following reasons, ExxonMobil is not associated with such releases.

Site R is a closed industrial waste landfill adjacent to the Mississippi River. (UAO ¶ 16c) Monsanto owned Site R, also known as the Monsanto-Sauget Toxic Landfill. (UAO ¶ 20c) Industrial Salvage Disposal/Sauget and Co. operated the landfill for Monsanto from approximately 1957 to 1977. (UAO ¶ 16c) Monsanto used Site R for the disposal of hazardous and toxic wastes generated by its W.G. Krummrich plant and J.F. Queeny plant located in St. Louis. (UAO ¶ 16c)

ExxonMobil operated an oil refinery in Sauget from 1917 until its closure in 1970. The refinery did not dispose of any wastes at Site R. The UAO does not allege any liability by ExxonMobil for Site R. (UAO ¶¶ 19b and 20c).

Sediment samples collected by EPA from the Mississippi River adjacent to Site R defines an impact area coinciding with the northern and southern areas of Site R. (UAO ¶¶ 6-7)

¹ The communicating PRPs are Browning Ferris Industries of North America (including Trashmen, C&E Hauling and Hilltop Hauling), Cerro Copper Products Company, Dennis Chemical Co., Inc., Dow Chemical Company, Ethyl Corporation, ExxonMobil Corp, Kerr-McGee Chemical, Norfolk Southern, Rogers Cartage and The Glidden Co. (for U.S. Paint Corporation).

- EPA concluded that the areal extent of contaminated sediment in the Mississippi River is best defined by the presence of chlorobenzene, 4-chloroaniline, 3-chloroaniline, 4-chloraniline, 1,2-dichlorobenzene, aniline, PCBs and Δ -BHC. (UAO ¶ 7) These chemicals are not associated with oil refining.
- Groundwater data collected by Solutia and its consultants during the recent Sauget Area 2 Focused Feasibility Study ("FFS"), as well as past groundwater investigations by show a strong correlation between the chemicals of concern found in the Mississippi River sediment and groundwater at Site R. (UAO ¶¶ 8-11)
- The principal chemicals of concern identified by EPA are raw products, production intermediates, by-products and/or chemical products used or produced by Monsanto at the W.G. Krummrich plant and/or the J.F. Queeny plant.
- The UAO states that volatile organic compounds ("VOCs") and semi-volatile organic compounds ("SVOCs") are present in groundwater from the Mississippi River to the W.G. Krummrich plant." (UAO ¶ 12)
- Data developed during Solutia's FFS reveals that concentrations of VOCs in the shallow and middle groundwater unit upgradient of Site R are in the 100 to 1,000 ppb range, while concentrations of VOCs underneath Site R and immediately downgradient of Site R are 10 times to 100 times higher. As such, the only reasonable conclusion to be drawn from the data is that Site R accounts for 90% to 99% of the VOCs targeted by the selected remedy.
- The W.G. Krummrich plant is under an Administrator Order on Consent under the Resource Conservation and Recovery Act ("RCRA") to undertake corrective actions which in part include groundwater contamination at the facility. (UAO ¶ 17c) Soil and groundwater samples from the W.G. Krummrich plant show chemical constituents consistent with those found in soil and groundwater at Site R. (UAO ¶ 18g) The W. G. Krummrich plant is not only the largest area by far in the remedy's anticipated capture zone, but also its raw materials and products closely correlate with identified groundwater contaminants of concern and it has been the subject of documented spills and releases.

It is clear that the principal, if not exclusive contributors to contamination within the groundwater OU are releases from Site R and the W.G. Krummrich plant. ExxonMobil is not associated with such releases.

The UAO Speculatively Asserts that Other Areas Constitute "Possible" Sources of Contamination in the OU - ExxonMobil has Limited or No Association with These Alleged Sources

The UAO speculates that based on historical waste disposal practices four disposal areas in Sauget Area 2 (Site O, Q, R and S), one disposal area in Sauget Area 1 (Site I), the W.G. Krummrich Plant, Clayton Chemical and various other industrial facilities are allegedly upgradient of the OU and "could be contributing" to the groundwater contamination. (UAO ¶ 14) ExxonMobil has no association with Sites Q, R and S, the W.G. Krummrich plant or Clayton Chemical. It has a limited association with Site O, and at best an alleged association with Site I.

- The UAO concludes that "three groundwater concentration highs are present in the groundwater beneath and upgradient of Sauget Area Site R: 1) one at Sauget Area Sites R and Q (dog leg), immediately adjacent to the Mississippi River, 2) another at the W.G. Krummrich plant owned and operated by Solutia, and to a lesser extent 3) a third at the location of Sauget Area 2 Site O." (UAO ¶ 15) (emphasis supplied)
- As discussed above, Solutia, not ExxonMobil, is responsible for releases from Site R and the W.G. Krummrich plant.
- Site S, located southwest of Site O, is a small disposal site associated with the activities of the Clayton Chemical facility. (UAO ¶ 16d) The Clayton Chemical facility is located between Site O and the dog leg portion of Site Q. It operated as an oil and solvent reclaiming facility from the mid 1960s to 1998. (UAO ¶ 17b) There is no information indicating that ExxonMobil's former refinery sent any waste to Clayton Chemical or that it is anyway associated with Site S. EPA has not alleged that ExxonMobil has any basis for CERCLA liability for Site S or Clayton Chemical. (UAO ¶¶ 19c, 20d and 20f)
- Site Q is an inactive landfill. (UAO 16b) The UAO identifies a portion of Site Q that wraps around a portion of the eastern and southern edge of Site R (the so-called dog leg portion of Site Q) as a contributor to the contamination in the Groundwater OU. (UAO ¶ 22) Chemical constituents in Site Q soil and groundwater are consistent with those found in soil and groundwater samples at the W.G. Krummrich plant. (UAO ¶ 18). There is no information that Mobil sent any waste to Site Q. EPA has not alleged that ExxonMobil has any basis for CERCLA liability for Site Q. (UAO ¶¶ 19b and 20b).
- EPA speculates that disposal at Site I "could be contributing" to the groundwater contamination because it may be upgradient from the OU. (UAO ¶ 14)
- Neither the UAO, nor the Record of Decision (ROD) for the Sauget Area 2 - Groundwater Interim Action establish any connection between Site I and the

groundwater contamination at Site R. The ROD merely speculates that the groundwater plume from Site I “likely extends to the Mississippi River in the vicinity of Sauget Area 2 Site R.” (ROD p.26) Neither the ROD, nor Solutia’s EE/CA and RI/FS efforts for Area 1 present any groundwater or contaminant transport modeling or similar analyses linking Site I to Site R groundwater concerns.

- EPA alleges that Mobil has liability as an arranger at Sauget Area 1 Site I. (UAO ¶ 19d) However, groundwater contamination at Site I is consistent with disposal by Monsanto, not ExxonMobil. (UAO ¶ 18e)

ExxonMobil has a Limited Association With Site O, But Not One Creating Any CERCLA Liability

The strongest connection between ExxonMobil and the Groundwater OU concerns Site O. However, such in nexus is limited and insufficient to establish any CERCLA liability for Mobil.

- Site O consists of four closed sludge drying lagoons owned by the Village of Sauget and used in connection with the Village’s wastewater treatment plant. (UAO ¶ 16a) The village operated lagoons between 1966-7 and 1978 for the disposal of sludge from its wastewater treatment plant. (Id.) The Village closed the lagoons in 1980. (Id.)
- Any connection between Site O and the groundwater OU is tenuous at best. Neither EPA nor Solutia has performed any groundwater or contaminant transport modeling demonstrating that Site O could impact the groundwater OU. Further, contaminant levels found in groundwater near Site O are orders of magnitude lower than those for chemicals found in groundwater at Site R and the W.G. Krummrich plant.
- Even if Site O is deemed a contributor to contamination at the Groundwater OU, there is insufficient information for CERCLA liability to accrue to ExxonMobil.
- ExxonMobil is not alleged to be an owner nor operator of Site O. (UAO ¶ 20)
- ExxonMobil’s only connection to Site O is through its refinery’s permitted discharge of wastewater to the Village sewer system. The refinery discharged storm water and process wastewater to the Village of Sauget sewer system. ExxonMobil’s status as a permitted discharger to a municipal wastewater treatment plant excludes it from liability under CERCLA for the Village’s subsequent disposal of wastewater treatment residuals into the sludge lagoons. This permitted discharge of storm water and wastewater to the Village sewers does not raise ExxonMobil to the status of an arranger with respect to liability under CERCLA.

- To the extent it is construed that ExxonMobil is an alleged arranger for Site O, the wastewater discharged to the Village sewers would not have contained hazardous substances, as defined by CERCLA. Prior to the discharge of its wastewater to the Village sewer, the refinery removed oils and solids from the wastewater through its No. 4 trap and two API separators. More importantly, to the extent chemical constituents were present in the discharge, such materials, if present, were constituents of petroleum, including crude oil or fractions thereof, or otherwise hazardous substances naturally present in petroleum. As a result, under CERCLA's "petroleum exclusion" at 42 U.S.C. § 9601(14), the discharge was exempt from CERCLA's liability scheme.
- Finally, the refinery discharged wastewater to the Village sewers for a very limited period during of the operation of the sludge lagoons - from 1966 to 1970. During this a period, refinery operations (and associated wastewater discharge levels) were winding down. Subsequent wastewater discharges from ExxonMobil's Sauget terminal were de minimis.

Therefore, for the foregoing reasons, Exxon Mobil has sufficient cause pursuant to Section 106(b)(1) of CERCLA not to comply with the UAO.

ExxonMobil has Made a Good Faith Effort to Comply With the UAO

Notwithstanding the reasons set forth above for which ExxonMobil may assert the Section 106(b) sufficient cause defense, ExxonMobil has made good faith effort to comply with the UAO. Mr. Muno's October 3, 2002 letter informed ExxonMobil that the Agency determined not to use the settlement procedures outlined under Section 122 of CERCLA because it believed that they would not expedite remedial action at the Area 2, Site R groundwater Operable Unit. Instead, he stated that EPA concluded that the remedial action could only be begin in a timely manner through the issuance of the UAO.

Mr. Muno further indicated that Solutia, Inc. ("Solutia") was already cooperating with EPA in expediting the cleanup at the OU. He directed ExxonMobil, as well as the other Respondents to contact Solutia's attorney, Linda Tape, if they intended to join in these efforts. In the November 6, 2002 a meeting between EPA and Respondents, you stated that Solutia would be implementing the remedy outlined in the UAO. You further indicated that only one PRP could perform the remedy, therefore, good faith compliance with the UAO could only be achieved through reaching a cost-sharing agreement with Solutia.

Subsequently, in a good faith effort to reach a settlement with Solutia, ExxonMobil and American Zinc Company, Browning Ferris Industries of North America, Cargill Inc., Cerro Copper Products Company, Chemical Waste Management Inc., Dennis Chemical Co., Inc., Ethyl Corporation and Ethyl Petroleum Additives, Inc., the Glidden Co., Pillsbury Company, Rogers Cartage and Cyprus Amax Minerals Company (the "Settlement Parties") presented a settlement offer to Solutia by letter dated December 19, 2002. Solutia

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rejected the Settlement Parties offer and by letter dated January 8, 2003 and made a counter-offer to the Settlement Parties. In response, the Settlement Parties made a counter proposal to Solutia that Solutia rejected on February 10, 2003.

Subsequently, ExxonMobil and Cerro made a joint settlement offer to Solutia on February 11, 2003 under terms materially different than that made by the Settlement Parties. ExxonMobil has made a good faith effort to achieve a cost sharing agreement with Solutia, but, as of the writing of this letter, no agreement has yet been reached with Solutia. However, our discussions with Solutia continue.

Please contact me if you have any questions.

Best regards,


Craig H. Zimmerman JAI